

**GRRC 5-Year Review
Suggested changes to Rules
Subject to CCEC Approval**

GRRC Comments:

- R2-20-105(D)(3): Should be reworded because it is unclear
- R2-20-111(C): “Parts appear to conflict with ARS 16-958(F). Statute says candidate shall make records available electronically or at campaign headquarters. 111(C) removes option of providing records electronically and substitutes the commission office for campaign headquarters. Isn't this a conflict?”
Many sections repeat statute, some verbatim – “is this wise, necessary?”
- R2-20-206: Recommendation doesn't say if it should be in writing or not
- R2-20-207(B): Duplicative of R2-20-208(A)
- R2-20-215(C): Duplicative of R2-20-223
- R2-20-215 & 217: “So a respondent can appeal twice - once when there is a probable cause finding under R2-20-215 and again when there is an enforcement proceeding under R2-20-217?”
- R2-20-222: Civil Penalties; the amounts of penalties are set by ARS 16-942. Commission can reduce penalties under ARS 16-957. “But why do you need a rule providing a ceiling on the amount of penalties? Isn't it possible that the Commission may believe it is necessary to assess full statutory penalties? Does this rule say the Commission can't do that? Where is the authority to limit the authority of the courts?”
- R2-20-223: Under ARS 41-1092.03(A)(2) – “notice must also include the nature of the alleged violations not just statute or rule violated.”
- R2-20-224: Typos “must be file” (A) and “and expedited hearing” (C)
- R2-20-303: “Rule seems unclear because it does not specify who has the responsibility to notify Commissioner/employee”
- R2-20-304: “How can you enforce a rule that does not appear mandatory - uses ‘should’ rather than ‘shall’? Other Commission rules use ‘shall’”
- R2-20-604: “Shouldn't there be clarification of what appropriate action might include?”

GRRC Comment: R2-20-105 should be reworded because it is unclear

R2-20-105. Certification for Funding

- D. The secretary of state has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
1. Unsigned by the contributor;
 2. Undated; or
 3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.

GRRC Comment: Parts appear to conflict with ARS 16-958(F). Statute says candidate shall make records available electronically or at campaign headquarters. 111(C) removes option of providing records electronically and substitutes the commission office for campaign headquarters. Isn't this a conflict?"

GRRC Comment: Many sections repeat statute, some verbatim - "is this wise, necessary?"

R2-20-111. Books and Records Requirements

- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be in writing and shall be delivered to the candidate and his or her campaign committee chair, with a copy to the Commission, 10 or more calendar days before the proposed date of the inspection. If the request is made two weeks before the primary or general election, the request shall be delivered at least two business days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

GRRC Comment: Recommendation doesn't say if it should be in writing or not

R2-20-206. ~~Administrative Counsel's~~ Executive Director's Recommendation on Complaint-generated Matters

- A. Following either the expiration of the five day period specified by R2-20-205 or the receipt of a response as specified by R2-20-205(A), whichever occurs first:
1. The Executive Director may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction; ~~or~~
 2. The ~~Administrative Counsel~~ Executive Director may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of R2-20-205(A).

- B. Neither the complainant nor the respondent has the right to appeal the ~~Administrative Counsel's~~ Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not a final administrative action.

GRRC Comment: R2-20-207 is duplicative of R2-20-208(A)

R2-20-207. Internally Generated Matters; Referrals

- A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Administrative Counsel may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Administrative Counsel shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.**

R2-20-208. Complaint Processing; Notification

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, **the Commission shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding.** In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Administrative Counsel shall so ~~advise~~ notify both ~~the~~ complainant and respondent ~~by letter~~.
- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957 (C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings.

GRRC Comment: R2-20-215(C) is duplicative of R2-20-223

GRRC Comment: "So a respondent can appeal twice - once when there is a probable cause finding under R2-20-215 and again when there is an enforcement proceeding under R2-20-217?"

R2-20-215. The Probable Cause to Believe Finding; Notification

- A.** If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.
- B.** If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.
- C. If the Commission makes a finding that the respondent has violated a statute or rule over which the Commission has jurisdiction pursuant to subsection (A) of this rule, the respondent will be notified of his or her right to appeal the decision pursuant to the Arizona Administrative Procedures Act, A.R.S. § 41-1092.**

GRRC Comment: Civil Penalties; the amounts of penalties are set by ARS 16-942. Commission can reduce penalties under ARS 16-957. "But why do you need a rule providing a ceiling on the amount of penalties? Isn't it possible that the Commission may believe it is necessary to assess full statutory penalties? Does this rule say the Commission can't do that? Where is the authority to limit the authority of the courts?"

R2-20-222. Civil Penalties

A civil penalty negotiated by the Commission or imposed by a court for a violation of the Act shall not exceed the greater of \$10,000 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of \$15,000 or an amount equal to 200 percent of any contribution or expenditure involved in the violation.

GRRC Comment: Under ARS 41-1092.03(A)(2) - "notice must also include the nature of the alleged violations not just statute or rule violated."

R2-20-223. Notice of Appealable Agency Action

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to ~~R2-20-218~~ R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and

3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

R2-20-224: Typos "must be file" (A) and "and expedited hearing" (C)

R2-20-224. Request for an Administrative Hearing

- A. The respondent must be file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in R2-20-223.
- B. If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.
- C. The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless and expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

R2-20-303: "Rule seems unclear because it does not specify who has the responsibility to notify Commissioner/employee"

R2-20-303. Notification to Commissioners and Employees

- A. The provisions of this Article shall be brought to the attention of, and made available to, each Commissioner and employee by furnishing a copy at the time of final publication. The provisions of this Article shall further be brought to the attention of such Commissioners and employees at least annually thereafter.
- B. The provisions of this Article shall be brought to the attention of each new Commissioner and new employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Commission may prescribe.

R2-20-304: "How can you enforce a rule that does not appear mandatory - uses 'should' rather than 'shall'? Other Commission rules use 'shall'"

R2-20-304. Interpretation and Advisory Service

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article should consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director should be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

R2-20-604: "Shouldn't there be clarification of what appropriate action might include?"

R2-20-604. Sanctions

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

